



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

N

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------|------------------|
| 10/086,417 | 03/04/2002 | Bernd Riedl | BAYER 16 P4 | 3172 |
| 23599 | 7590 | 03/23/2007 | EXAMINER | |
| MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201 | | | HENLEY III, RAYMOND J | |
| | | ART UNIT | PAPER NUMBER | |
| | | | | 1614 |

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 03/23/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/086,417 | RIEDL ET AL. | |
| | Examiner | Art Unit | |
| | Raymond J. Henley III | 1614 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11 December 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 and 39-53 is/are pending in the application.
 - 4a) Of the above claim(s) 2,5,6,12 and 39-53 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3,4 and 7-11 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1614

CLAIMS 1-12 AND 39-53 ARE PRESENTED FOR EXAMINATION

Applicants' reply filed December 11, 2006 has been received and entered into the application. Applicants' remarks have overcome the rejection not reiterated herein from the previous Office action the rejection not reiterated from the previous office action are hereby withdrawn. The following Office action constitute the totality of issues remaining in the present application.

Election/Restriction

As per the Office action dated July 8, 2003, claims 2, 5, 6, 12 and 39-53 remain withdrawn from consideration as being directed to non-elected subject matter, such election having been made with traverse in Applicants' communication filed August 8, 2003. The remaining claims, i.e., claims 1, 3, 4 and 7-11 are herein acted on the merits.

The Examiner anticipates that is application will be in condition for allowance except for the presence of the subject matter non-elected with traverse. Applicants should either cancel/amend the claims commensurate with the elected subject matter or else take other appropriate action (37 CFR 1.144).

Double Patenting

Provisional

Claims 1, 3, 4 and 7-11 remain provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the pending claims of U.S. Application Serial Nos. 09/889,227, 10/071,248, 09/948,915, 10/361,858, 09/993,647, 10/042,203, 10/361,859, 10/308,187 or 10/895,985. Although the conflicting claims are not

Art Unit: 1614

identical, they are not patentably distinct from each other because the present claims have not been limited to a particular species or group of species and thus, the generic form of the present claims renders the presently claimed subject matter not patentably distinct over the claims of the above referenced U.S. Applications.

Applicants should either clearly demarcate the claims of these several applications or file an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

None of the claims are currently in condition for allowance.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

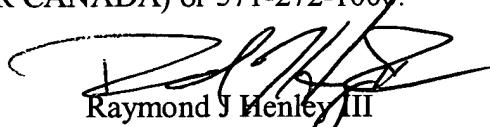
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Henley III whose telephone number is 571-272-0575. The examiner can normally be reached on M-F, 8:30 am to 4:00 pm Eastern Time.

Art Unit: 1614

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Raymond J. Henley III
Primary Examiner
Art Unit 1614

March 16, 2007